(1)

90-1505

No.

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In the Supreme Court of the United States

October 1990 Term

ROSEE TORRES d/b/a LEGAL SECRETARIAL SERVICES, LTD., TELEPHONE SECRETARIES UNLTD., DOCTORS HELPER & ATTORNEYS HELPER,

Petitioner,

v.

ILLINOIS BELL TELEPHONE COMPANY, an Illinois Corporation, AMERICAN TELEPHONE & TELEGRAPH INFORMATION SYSTEMS a/k/a AMERICAN TELEPHONE & TELEGRAPH CO., INC., a/k/a AT&T, A New York Corporation, and AT&T INFORMATION SYSTEMS, INC., a/k/a AT&T-IS, INC., a/k/a AT&T-IS, a Delaware Corporation, P.HANEBUTT & F.ARTWIC,

Respondents.

PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

ROSEE TORRES
PRO SE
201 North Wells Street
Suite 1206
Chicago, Illinois 60606
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QUESTIONS PRESENTED FOR REVIEW

WHETHER FEDERAL COURT HAS JURISDICTION OF CLAIMS UNDER FAIR DEBT COLLECTION PRACTICES ACT (15 U.S.C., SEC. 1692 et seq.)

*

WHETHER PLAINTIFF IS A CONSUMER UNDER FAIR DEBT COLLECTION PRACTICES ACT

*

WHETHER PLAINTIFF ENTITLED TO A JURY TRIAL UNDER FAIR DEBT COLLECTION PRACTICES ACT & PURSUANT TO SEVENTH AMENDMENT

*

WHETHER FEDERAL AND APPEALS COURT HAVE JURISDICTION OVER DISMISSED PENDANT CLAIMS

*

WHETHER FEDERAL AND APPEALS COURT HAVE JURISDICTION TO ISSUE TURNOVER ORDER ON ASSETS SUBJECT MATTER OF LITIGATION

*

WHETHER A DISMISSAL WITHOUT PREJUDICE IS AN ADJUDICATION ON MERITS SUFFICIENT TO SUSTAIN DEFENSE OF RES JUDICATA

WHETHER SAME STANDARDS APPLY TO RULE 11 SANCTIONS AND SECTION 1988 ATTORNEYS FEES

*

WHETHER PLAINTIFF FILED A TIMELY NOTICE OF APPEAL

*

WHETHER RULE TO SHOW CAUSE & SANCTIONS APPLY UPON FAILURE TO COMPLY WITH FEDERAL RULES OF APPELLATE PROCEDURE 12(b),12(c) and 31(d).

*

WHETHER FEDERAL COURT HAS JURISDICTION ON CLAIMS ENFORCING FEDERAL ANTI-TRUST DIVESTITURE ORDER

*

WHETHER THERE IS ABUSE OF DISCRETION IN ORDER FOR RULE 11 SANCTIONS ON CLAIMS WELL-GROUNDED IN FACT AND LAW

PARTIES TO THE PROCEEDINGS

Plaintiff-Appellant:

1) ROSEE TORRES, individually and doing business a LEGAL SECRETARIAL SERVICES, LTD., TELEPHONE SECRETARIES UNLTD., ATTORNEYS HELPER & DOCTORS HELPER.

Defendants-Appellees:

1) AMERICAN TELEPHONE & TELEGRAPH COMPANY, INC., a New York Corporation, also known as "AT&T"
2) ILLINOIS BELL TELEPHONE COMPANY, a division/subsidiary of AMERITECH CORP., an Illinois Corporation, also known as "BELL".
3) AT&T INFORMATION SYSTEMS, INC., a division/subsidiary of AMERICAN TELEPHONE & TELEGRAPH CO OF NEW YORK, a Delaware Corportion.
4) FREDERIC ARTWICK
5) PAMELA R. HANEBUTT

COUNSEL OF RECORD

Plaintiff-Appellant

Rosee Torres - Pro Se

Defendants-Appellees

District Court & Seventh Circuit

Barbara Rakley, Frederic Artwick, Pamela Hanebutt and John Heller, for American Telephone & Telegraph Co., AT&T Information Systems, Inc., Pamela Hanebutt & Frederic Artwick.

*

Patrick Kilroy, Edward Butts and R. Guritz for Illinois Bell Telephone*

*Illinois Bell Telephone did not file Appearance or Briefs in Seventh Circuit; Rule to Show Cause by Seventh Circuit not decided or reviewed. (EX. P)

TABLE OF CONTENTS

	Page
Questions Presented for Review	i
Parties to the Proceedings ..	iii
Table of Contents.....	v
Table of Authorities.....	vii
Jurisdiction.....	xv
1. STATEMENT OF FACTS.....	1
11. ARGUMENT.....	11
A. Federal Court Has Jurisdiction of Consumer Business Claims Under Fair Debt Collection Practices Act.....	12
B. Jury Trial Entitled in FDCPA Claims Under Tort Theory & 7th Amendment...	22
C. Federal Court Lacked Jurisdiction to Decide Issues In Dismissed Pendant claims After Dismissal.....	25
D. Federal Court Turnover Order Void if Asset Subject Matter of Litigation.....30	
E. Dismissal Without Prejudice Is Not Adjudication on Merits, Final or Res Judicata.....	33

Table of Contents (Cont'd)

Page

F. Rule To Show Cause Issues Upon Appellee's Non-Compliance with FRAP 12(b), 12(c) and 26..... 41

III. CONCLUSION 44

APPENDIX

Exhibits "A" to "Q"

ABBREVIATIONS

#A- Docket ID# - U.S.Court of Appeals

NR- Docket ID# - U.S. District Court

EX. Exhibits

BR. Brief

Rep.Br. Reply Brief

TABLE OF AUTHORITIES

	Page
Albemarle Paper Co. v. Moody 422 U. S. 405, 416 (1975).....	18
Bank of Boston Int'l v. A. Tefel 644 F. Supp. 1423 , 3 UCCRS 2d 1069 (1986).....	14
Borowski v. DePuy, Inc. 850 F. 2d 1429, 1434 (7th Cir. 1987)	20
Boudreaux v. All State Finance Corp. 217 So. 2d 439 (La.App. 1968).....	23
Brown v. National Board of Medical Examiners, 800 F.2d 168, 173 (7th Cir. 1986)....	18
Brown Shoe Co. v. U. S., 370 U.S. 294, 308-309, 82 S. Ct. 1502 1514-1515, 8 L.Ed. 2d 510 (1962)....	39
Brunswick v. Mandel 59 Ill.2d 502, 505-507, 322 N.E.3d 25, 28-29 (1974)	31
Budinich v. Becton, 108 S. Ct. 1717 (1988).....	38,39
Callarama v. Assoc. Discount Corp. 69 Mis.2d 287, 329 N.Y.S.2d 711 Sup. (1972).....	24
In re Central Ice Cream Co., 836 F.2d 1068, 1072 (7th Cir. 1987)..	20
Classic Components Supply, Inc. v. Mitsubishi Electronic America, Inc. 841 F.2d 163, 165 (7th Cir. 1988).....	20

Page

Cleveland v. Berkson,
878 F.2d 1034, 1036 (7th Cir. 1989)...38,39

Crews v. Provident Finance Co.,
271 N.C. 634, 157 S.E.2d 381 (1967).. 24

Dawson v. Associates Finance Service Corporation,
215 Kan. 814, 529 P.D. 104 (1974)... 23

Dickinson v. Petroleum Conversion Corporation,
338 U. S. 507, 513-516, 70 S. Ct. 322-326. 94 L.Ed. 299 (1950)..... 39

Dunn & Bradstreet v. McEldowney,
564 F. Supp. 257 (1983)..... 14,16

Durhan v. Peoplitan,
875 F.2d 91 (7th Cir. 1989)..... 35

Duty v. General Finance Co.
154 Tex. 16, 273 S.W.2d 64 (1954)... 23

FDIC v. Elefant,
79o D,2d 661, 668 (7th Cir. 1986) 19

FDIC v. New London Enterprises,
619 F.2d 1099, 1102-08 (5th Cir. 1980) 26

Farley Transportation Co. v. Santa Fe Trail Transportation Co.,
778 F.2d 1365, 1368-1370 (CA 9 1985).. 28

Ford Motor Company v. Sheehan,
373 So.2d 956 (Fla. App.) cert. den.
379 So.2d 204 (Fla. 1979)..... 23

Page

George v. Jordan Marsh Co.
359 Mass. 244, 268 N.E.2d 915
(1971)..... 23

General Finance Corp.v. Davis,
126 Ga. App.821, 191 S.Ed.2d
865 (1972)..... 24

In re Green,
369 U. S. 689 (1962)..... 27

Hagge v. City of Evanston,
729 F.2d 510 (7th Cir. 1989)... 35

R.K. Harp Investment Corp., v.
McQuaid
825 F.2d 1101, 1103 (7th Cir.
1987)..... 20

In re Harte,
701 F.2d 62 (7th Cir. 1983).... 42

Hays v. Sony Corporation,
847 F.2d 412, 418 (7th Cir. 1988) 20

Henry v. Farmer City State Bank,
808 F.2d 1223 (7th Cir. 1986).. 35

Hill Grocery Co. v. Carroll,
233 Ala. 376, 136 So. 789 (1931)23 23

Itri v. Equibank, N.A.
318 Pa. 424 A2d (1983)..... 15,16

Jeter v. Credit Bureau, Inc.
760 F.2d 1168 (1985 CA 11 Ga.)... 14,18

Kerckafric, Ltd. v. Maxwell Meyers
Affiliations, Ltd.
108 F. Supp. 594, 595 9S.D. 1952) 32

Page

Lorillard v. Pons,
434 U. S. 575, 577, 98 S. Ct. 866, 868, 55 L.Ed2d 40 (1978) 25

Miller v. Fenton,
474 U. S. 104, 114 (1985).... 10

Moore v. Greene,
431 F.2d 584 (9th Cir., 1970 (Applying California law).... 23

Moorehead v. J.C Penney Co.,
555 S.W. 2d 713 (Tenn. 1977) 24

Mortell v. Mortell,
887 F.2d 1322 (7th cir. 1989) 35

Pernell v. Southall Realty,
416 U.S. 363, 375, 94 S.Ct. 1723, 1729, 40 L.Ed.2d 198 1974)..... 26

Pierce v. Underwood,
108 S. Ct. 2541, 2546-49 (1988) 16

Plessy v. Ferguson,
163 U.S. 537 (1896)..... 19

In re Pritzker,
762 F. 533 (7th Cir. 1985) 42

Riveria, Adm. v.MAB Collections,
682 F. Supp. 174 (W.D.N.Y.1988) 12,17,23

Rogers v. Loether,
467 F.2d 1110, 1124 (7th Cir. 1972); aff'd sub.nom. Curtis v. Loether, 415 U. S. 189, 94 S.Ct. 1005, 39 L.Ed.2d 260 (1974)... 25

Page

Santiesteban v. Goodyear Tire & Rubber Co., 306 F.2d 9 (5th Cir. 1962) (Applying Florida law)..... 23

Sibley v. Fulton DeKalb Collection Service, 677 F.2d 830 (1983)..... 25

Summit Loans, Inc. v. Pecola, 265 Md. 43, 288 A.2d 114 (1972) 23

Szabo Food Services, Inc. v. Canteen Corporation, 823 F.2d 1073, 1080-82 (7th Cir. 1987)..... 19

Tolefson v. Price, 247 Or.398, 430 P.2d 990 (1967).. 23

Torres v. Rebarchak, 814 F.2d 1219 (1987) 36

United Mine Workers v. Gibbs, 383 U. S. 715, 726 (1966)..... 27,36

United States v. Americn Telephone & Telegraph Co., 552 F. Supp. 131 (D.D.C. 1982) aff'd sub. nom. Maryland v. United States, 460 U. S. 1001 (1983); (a/k/a Modification of Final Judgment or MFJ)..... 3

United States v. Burr, 25 F. Cas.30, 35 (No. 14 682d) (CC Va. 1807) 19

Page

United States v. Bush,
797 F.2d 536, 537 (7th Cir. 1986)..... 42

United States v. Ford,
806 F.2d 769 (7th cir. 1986) 42

United States v. Gerrity,
809 F.2d 1330 (7th Cir. 1986) 42

United States v. Robinson,
361 U.S. 220, 229,80 S.Ct. 282,288, L.Ed.2d 259 (1960)..... 28,39

United States v. Santiago-Gonzales,
816 F.2d 336 (7th Cir. 1988) 42

United States v. Stillwell,
810 F.2d 135 (7th Cir. 1987) 42

Uptown Peoples Community Health Services Board of Directors v. Board of Commissioners of Cook County, et al
CA. Ill. 647 F.2d 727 cert. den. 102 Sup. Ct. 328..... 27

Warschauser v. Brooklyn Furniture Company,
159 App. Div. 81, 144 N.Y.S. 257 (1913)..... 24

Whatley v. Universal Collection Bureau,
525 F. Supp. 1204 (N.D. Ga. 1981) 14,18,22 23

Federal Statutes

	Page
15 U.S.C., Sec. 1692 et seq. (See "FDCPA")	ix,x,xv-xvi, xxii-xxiii, 6,7,12-26,35, 43
Truth-in-Lending Act..... (See Sec. 803(3), as Amended)	12
28 U.S.C., Sec. 1254(1).....	xv
28 U.S.C., 1291.....	xviii
42 U.S.C., 1988.....	39,40

Federal Agencies

Federal Communications Commission "In the Matter of Procedures for Implementing the Detariffing of Customer Premises Equipment & enhanced Services, etc." FCC No. 85-220, 356; CC Docket No. 81-893, File No. ENF 83-16, Adopted 4/16/85 Issued 5/5/85...	4

Federal Rules of App.Procedure

FRAP 2.....	40
FRAP 3(a).....	40

Federal Rules of Practice

	Page
FDAP 2	40
FRAP 3(a)	40
FRAP 4(a)(1)	40
FRAP 12(b) & 12(c)	41
FRAP 17.1(a)	45
FRAP 26(b)	40
FRAP 31(d)	42
FRAP 34.1(a)	45
FRAP 40	10,13,14
FRCP 11	ii,7,13, 15-20,43
FRCP 54 & 58	38

Illinois Statutes & Codes

Illinois Revised Statutes:

Ch. 110, Sec. 13-205 & 13-206	xvii, 3
Ch. 110, Sec. 217	xvii, 3
Ch. 110, Sec. 2-619	xvii,24
Ch. 110A, Sec. 273	33-40

Uniform Commercial Codes:

Sec. 2-725, 9-106 & 9-307	29

JURISDICTION

This is a petition for review for writ of certiorari under 28 U.S.C., Sec. 1254(1) from final judgments of January 4, 1991 by the U. S. Court of Appeals for the Seventh Circuit, which include: (a) denial of Petition for Rehearing under Rule 40 (EX. H); (b) award of costs to Respondents, **AT&T** (EX. A)

Jurisdiction in which the Petition for Rehearing was filed involves questions of interpretation and rights under a federal statute: **whether U. S. District court has jurisdiction to hear claims under the Fair Debt Collection Practices Act, 15 U.S.C., 1692 et seq. and whether Petitioner, individually and as a person engaged in business, qualifies as a "consumer" under the Act.**

Another federal question for which jurisdiction is invoked is **whether Petitioner is protected by the guarantees of**

of the Seventh Amendment, or right to jury trial, under the Fair Debt Collection Practices Act,

In addition to the above federal questions for granting review, Petitioner seeks review under Supreme Court Rule 10 as to errors in law in which the U.S. Court of Appeals for the Seventh Circuit and the district court decision in this case is in conflict with the decisions of the U. S. Supreme Court, other circuits and divisions of the Appellate court and in conflict with the Seventh Circuits own prior decisions. The inconsistencies and conflicts not only include the above federal questions, but the following for which Petitioner seeks review (a) the district court and Seventh Circuits decision that dismissal(s) without prejudice, dismissal(s) for lack of subject matter jurisdiction and voluntary dismissal constitute final adjudication

on the merits and result in res judicata; (b) Attorneys fees under Section 1988 and Rule 11 sanctions are based on the same standards; (c) the validity of the district court and Seventh Circuit's turnover order after the state claim was dismissed without prejudice and in which the subject matter of the order consisted of the assets of those dismissed claims; and (d) jurisdiction of federal court to enforce federal anti-trust divestiture order issued by Federal Communications Commission.

The U. S. Supreme Court also has discretionary powers to review those decisions in which there is a conflict with state statutes, which include Petitioner's right to refile within the statute of limitations under Ill. Rev. Stat., ch. 110, Sec. 13-205 and Sec. 13-206 as to 5- and 10-year oral and written contracts, right to jury trial on genuine and disputed issues of fact under Ill. Rev. Stat., ch. 110, Sec. 2-619.

Jurisdiction - U.S. Court of Appeals for the Seventh Circuit

Plaintiff appealed a final judgment order entered on May 03, 1989 by the U.S. District Court, Northern District, Eastern Division. (EX.J) Notice was filed in the district court on May 12, 1989.(NR-116) Jurisdictional statement was filed in the district court on May 12, 1989. (NR-116) Jurisdictional statement was filed in the U. S. Court of Appeals on May 18, 1989 and amended per court order on May 23,30,1989. (#55757-1 , #56613-1 and #57957-1)

Jurisdiction was invoked under 28 U.S.C., Sec. 1291.

Orders Sought to be Reviewed

Plaintiff-Appellant seeks review of the following Seventh Circuit Orders and decisions:

January 4, 1991:

(a) Order denying Plaintiff re-hearing. (EX. H; A-54942-1)

(b) Order awarding court costs in to appellees, "AT&T." (EX. A,#A-54942-1)

September 12, 1990:

(a) Order affirming district court order of May 3 and May 9, 1989 awarding Rule 11 Sanctions against Plaintiff-and for AT&T: (A-193252-1)

(b) Order affirming district court decision that plaintiff not a "consumer" under Fair Debt Collection Practices Act, 15 U.S.C., Sec. 1692 et seq.; that district court lacked jurisdiction to decide claim under Act; and that plaintiff's claim "frivolous." (A-193252-1)

April 27, 1990:

Order for Rule to Show Cause pursuant to Federal Rules of Appellate Practice 26 and 31 as to appellee Illinois Bell Telephone's failure to file appearance, brief or extension on time. No decision or action by court. (EX.O, #A-54942-1)

December 1, 1989:

Order denying plaintiff-appellant's Motion for Reconsideration of Motion to Stay Order for Return of Switchboards & Leave to File Supporting Affidavits. (EX. D, #A-94094-1)

August 28, 1989:

Order denying plaintiff-appellant's Motion for Stay Order for Return of Switchboards (Turnover Order). (EX. E, #A-57966-1)

(c) Order declining to decide issues of August 3, 1988 and November 8,9 1988 district court orders, including res judicata. (A-193252-1)

January 24, 1990:

(a) Plaintiff's Notice of Appeal untimely as to district court's orders of dismissals of August 3, 1988 and November 8, 9 1988. (EX. C, #A-86514-1)

(b) Order declaring district court's dismissals of state claims without prejudice and lack of subject matter jurisdiction, and dismissals of federal claims with prejudice, as "Final/Adjudication on the merits." (#A-86514-1)

December 1, 1989:

Order denying plaintiff-appellant's Motion for Reconsideration of Motion to Stay Order for Return of Switchboards & Leave to File Affidavits in Support. (EX. D, #A-94094-1)

August 28, 1989:

Order denying plaintiff-appellant's Motion for Leave to File Supporting Affidavits, Payments & Receipts (re Turnover Order). (EX. F, #A-88792-1)

May 18, 1989:

Order declaring district court orders of August 3, 1988 and November 8 and 9, 1988 as "Final/Adjudication on the Merits." and Notice of Appeal filed May 12, 1989 as untimely, as to review of those orders. (EX. G, #A-54942-1)

Plaintiff-Appellant seeks review of the following district court orders and decisions:

May 3, 1989 (May 9, 1989):

(a) Order awarding Rule 11 sanctions against plaintiff-appellant and in favor of appellee "AT&T" for $3,903.50; (EX. I, NR-113,114)

(b) Order directing Clerk of the District Court to return four switch-boards impounded from plaintiff, to defendants AT&T. (EX. J, NR-113)

April 14, 1989

Order denying plaintiff's Motion for Rehearing as to district court's Rule against plaintiff in favor of "AT&T." (EX. M, NR-108)

March 15, 1989

Order awarding defendants AT&T fee petition as to Rule 11 sanctions against plaintiff in amount of $3,903.50. (EX. I) (NR-99)

November 8 & 9, 1988:

Order dismissing plaintiff's amended complaint, count III (FDCPA claim under 15 U.S.C., 1692 et seq.) "with prejudice" as to federal claim and for lack of subject matter jurisdiction as to state claims. (Amended November 16, 1988,NR-85) (EX.K , NR-8, 82 & 83)

August 3 & 4, 1988:

Order dismissing plaintiff's counts II and III for failure to state a claim and Order dismissing Counts I-IV for lack of federal jurisdiction. (NR-66,67; EX. 1)

Motions by Petitioner Not Decided by District or Appellate Court

April 18, 19888& June 20, 1988:

Plaintiff's Motion for Sanctions against defendants, **AT&T, AT&T-Is, Hanebutt and Artwick,** for tortious acts committed by agents and employees of **AT&T and AT&T-IS,** during pending litiation and for 20-month period into litigation of this case. (NR-30, 35-42; Brief, p. 9, #A-135481-1)

June 30, 1988:

Court's Order of June 28, 1988 for Evidentiary Hearing on Discovery Sanctions referred to Magistrate Weisberg. (NR-57; Brief, pp. 8,9-13 & 25 ; #A-135481-1)

In the
Supreme Court of the United States

ROSEE TORRES d/b/a LEGAL SECRETARIAL SERVICES, LTD., TELEPHONE SECRETARIES UNLTD., DOCTORS HELPER & ATTORNEYS HELPER,

Petitioner,

v.

ILLINOIS BELL TELEPHONE COMPANY, an Illinois Corporation, AMERICAN TELEPHONE & TELEGRAPH INFORMATION SYSTEMS a/k/a AMERICAN TELEPHONE & TELEGRAPH CO., INC., a/k/a AT&T, A New York Corporation, and AT&T INFORMATION SYSTEMS, INC., a/k/a AT&T-IS, INC., a/k/a AT&T-IS, a Delaware Corporation, et al,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I. STATEMENT OF FACTS

Petitioner, Rosee Torres, seeks review of a series of District Court and Seventh Circuit decisions in conflict with their prior decisions and those of other circuits, U. S. Supreme Court, State and Federal statutes and U.S. Constitution, 7th Amendment.

District Court. On March 9, 1988, Petitioner **Torres** filed a civil complaint consisting of federal anti-trust and state breach of contract and consumer fraud claims. (Br.,P.2) Included in the Complaint are causes of action re-filed from a prior federal claim (86 C 1718) which Petitioner voluntarily dismissed on September 23, 1987, and refiled within one (1) year pursuant to Ill. Rev. Stat., Ch. 110, Sec. 13-217. In addition are new causes of action not yet accrued under the prior claim, consisting of 13 written and oral contracts executed between Petitioner and Respondents, **Illinois Bell Telephone Co.** (hereinaftrer referred to as **"Bell"**), individually and/or as agent for either or both **American Telephone & Telegraph Co.** (hereinafter referred to as **"AT&T"**), **AT&T Information Systems, Inc.** (hereinafter referred to as **"AT&T-IS"**), ratified and confirmed by **Pamela Hanebutt**

and **Frederic Artwick** (hereinafter referred to as "**Hanebutt**" and "**Artwick**"), both agents for **AT&T and AT&T-IS. (Br.p.3; Rep. Br., pp.3-7)**

The complaint also alleged new causes of action pertaining to tortious acts committed after the dismissal of 86C 1718 and which continued for a 20 month period into the new litigation then pending, and new breaches of contract based on 5- and 10-year oral and written contracts for both service and purchase of equipment, filed pursuant to Ill. Rev. Stat., Sec. 13-205 and 13-206 (Br., pp. 3,4; Rep. Br., pp. 3-9)(NR-1)

The bove contracts, executed between 1978-1987, ratified by all Respondents in 1986-1988, were results of and subject matter of federal court ordered divestiture in which Bell continued as **agent** through 1987. United States v. American Telephone & Telegraph Company, 552 F.Supp. 131 (D.D.C.1982) aff'd sub nom Maryland v. United States, 460 U.S. 1001 (1983)(a/k/a Modification of

Final Judgment ("MFJ)). (Rep.Br.EX.DD,DD-1)

Included in the above contracts, which Respondents have never honored, and which Respondent **Bell** continued to act as agent in behalf of **AT&T and AT&T-IS,** for years after the divestiture, are the four 100-line telephone answering switchboards which Petitioner had not only in her possession and in use at her place of business from 1971 to 1987, but which Petitioner purchased and paid in full for first from **Bell** during divestitute hearings, and a second purchase for the same equipment, paying in full under protest, from **AT&T/AT&T-IS. The** purchase(s) were made pursunt to court order by the Federal Commission. "In the Matter of Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services (2nd Computer Inquiry): AT&T Request for Approval to Supplement the Capitalization of AT&T Information Systems in

Connection with the Transfers of Embedded Customer Equipment, FCC No. 85-220, 356; CC Docket No. 81-893, File No. ENF 83-16; Adopted April 26, 1985 and Issued may 15, 1985. After the district court dismissed Petitioner's Complaint and Amended Complaint on August 3, 1988 and November 8, 1988, Respondents **AT&T, AT&T-IS, Hanebutt & Artwick** motioned the court on March 24, 1989 for return of the switchboards which Petitioner had previously purchased. (NR-66, NR-81, NR-105) The district court had impounded the switchboards under case 86 C 1718; however,court granted Respondents' Motion to return the equipment in 88 C 2030, on May 3, 1989. (NR-113; EX. J)

One of the issues in this appeal is whether the district court has jurisdiction to hear motions and issue turnover orders after dismissing the case in its entirety and when the turnover assets are subject matter of the litigation.

On August 3, 1988, the district court dismissed the original complaint in its entirety, dismissing the state claims "without prejudice" and the federal claims "with prejudice", and basing the federal claims dismissal on the doctrine of res judicata, as argued in its Memorandum Opinion. (NR-66, NR-67; EX.L) In that same Order, and on the court's own motion, Petitioner was given leave to file Amended Complaint, Count III under the Fair Debt Collection Practices Act, 15 U.S.C., Sec. 1692 et seq. (hereinafter referred to as "FDCPA").

Petitioner filed Amended Complaint on August 15, 1988. (NR-70) The district court dismissed the Amended Complaint "with prejudice" on November 8, 1988, which included Memorandum Opinion declaring the claim as "frivolous" in that Petitioner was not a consumer and the district court lacked jurisdiction. (NR-81,82, 83; EX.K) Brief,pp.18-23 & EX.A; Rep. Brief, pp. 13-17,EX.HH-2,HH-3)

On motion of Respondents, **AT&T, AT&T-IS, Hanebutt & Artwick,** the district court awarded Rule 11 sanctions against the Petitioner and in favor of above Respondents in the amount of $3,903.50 on March 15, 1989. (NR-99) Petitioner filed a motion for re-hearing on March 16, 1989.(NR-101-104) The district court denied motion on April 14, 1989. (NR-108) The district court wrote two memorandums on the order for sanctions, one dated November 9, 1988 (NR-100) and another dated January 17, 1989 (NR-94). (Brief, pp.12, 29-30; Rep. Brief, pp. 19-22 & EX. H-3; Rehrg Brief, p. 4) (EX. B, I) Included in the above documents are petitioner's arguments as to why the Rule 11 sanctions are unjust since plaintiff's FDCPA claims were based on existing law and precedents in which other circuits and the statute itself allowed business persons to qualify as consumers under the Act, and allowed claims to be filed in either state or federal court.

On May 27, 1988, prior to the district court dismissals, Petitioner filed a motion for Rule 11 sanctions against A &T, AT&T-IS, and their agents and representatives for continued mail, telephone and other racially ethnic harassment committed against Petitioner and her employees by these defendants for a 20-month period, including the period in which the district court case was pending (88 C 2030). (NR-54, (NR057) The district court never acted on the motion, and the Seventh Circuit made no decision or action, even thought it was an issue in the appeal. (Br., pp. 8,9-13, 25) Included is Petitioner's request for sanctions for false statements made by agent. **Hanebutt**, under oath and in open court in a prior case 86 C 1718 in which she stated **AT&T & AT&T-IS** never owned the switchboards which were subject matter of the Turnover Order at issue herein. (Rep. Br., p.); however, in 88 C 2030, **Hanebutt**

changed stand, claimed ownership for which she, as agent for **AT&T and AT&T-IS**, and under supervision of **Artwick**, prevailed in a Motion for Return of Switchboards (Turnover Order). (Rep.Br. pp. 7-8; #A-135481-1)

With regards to the motions for sanctions, the District Court referred the matter to Magistrate Weisberg for discovery. (NR-57) the court never referred the motions and there was never a discovery hearing or evidentiary hearing as to that order. (Br. pp. 8,9-13 & 25; #A-135481-1)

Petitioner filed Notice of Appeal on May 12, 1989. (NR-116)

Seventh Circuit. On May 18, 1989, the Seventh Circuit declined to review the August 3 and November 8, 1988 orders on the rationale that the Notice of Appeal was untimely in that the August 3 and November 8, 1988 dismissals were on the merits, and the adjudication was final. (EX.G; #A-54942-1) Petitioner included arguments on those

issues in her brief which she was granted leave to file, and filed on February 23, 1990. (#A-135481-1)

Prior to the Brief, Petitioner filed Motion for Stay Order on the district court's Turnover Order (A-57961-1) and Motion for Stay Order on Sanctions (A-57966-1), on May 30 and 31, 1989. On June 13, 1989, Petitioner motioned for leave to file Affidavits of Proof of purchase of switchboards, which included hundreds of purchase invoices and payment receipts. The court denied both orders on August 28, 1989. (#A-57966-1 & A-88792-1; EX. E) On October 4, 1989, Petitioner filed a Motion for Reconsideration on Turnover Order and Affidavits, which was denied on January 24, 1990. (#A-94094-1; EX. C)

In addition, the court granted Respondents motion to dismiss appeal insofar as review of August 3 and November 8, 1988 dismissals by district court. (A-86514-1; EX.C)

On January 24, 1990, the Court ruled August 3 and November 8, 1988 orders were final and Notice of Appeal untimely. (EX.C, #A-86514-1) On September 12, 1990, the court affirmed the district court's decision that the FDCPA claim was frivolous as Petitioner was not a "consumer" under Act, and Rule 11 sanctions were appropriate. (A-193252-1,EX.B) Petition for Rehearing under Rule 40, filed September 24, 1990, was denied January 4, 1991. (#A-196847-1) & #A-54942-1, EX.H) The court awarded costs to **"AT&T"** in amount of $695.05 (EX.A, #A-54942-1) Petitioner seeks review by Writ of Certiorari within 90 days of order.

II. ARGUMENT

Review should be granted on all above decisions which are in conflict with existing U.S. Supreme Court, Seventh Circuit and other circuits' decisions, state and federal statutes, and Seventh Amendment of U.S. Constitution.

A.

FEDERAL COURT HAS JURISDICTION OF CONSUMER BUSINESS CLAIMS UNDER FAIR DEBT COLLECTION PRACTICES ACT, 15 U.S.C.,§1692.

Review should be granted as to the district court's dismissal with prejudice of Amended Complaint, on November 8, 1988 and Seventh Circuit's affirmance on September 12, 1990 and January 4, 1991. (EX. B,H.K,L) That Amended Complaint, filed pursuant to the court's own motion, was based on the Fair Debt Collection Practices Act, 15 U.S.C., Sec. 1692 et seq. (NR-70)

The dismissal decision conflicts with existing decisions in five other circuits which entitle relief to all persons injured by unfair trade practices,including relief under the following interpretation:

> "...any person who comes in contact with prescribed debt collection practices may bring claim under Fair Debt Collection Practices Act." C.C. Riveria, Adm. v. MAB Collections, 682 F. Supp. 174 (W.D.N.Y. 1988); Truth-in-Lending Act, Sec. 803(3) as amended: 15 U.S.C.A. 1692(a)(3). (EX. N; Rep. Br., pg. 17, #A-149495; Rehrg, pp. 6,7,16,#A-196847-1)

"Action for unfair debt collection practices may be maintained either in state or federal court." Itri v. Equibank, N.A. (1983) 318 Pa. 464 A2d 1136. (Rep.Br.,pp. 13,17,23)

AT ISSUE is (a) whether plaintiff is a consumer under the FDCPA, and (2) whether the U. S. District Court has jurisdiction in a claim for relief under the Act. The district court has ruled that Plaintiff is not a consumer and is not entitled to recovery under the Act, and the district court lacks jurisdiction to hear FDCPA claims. (EX.K) The district court , on defendants AT&T,AT&T-IS, and Hanebutt-Artwick's motion,awarded sanctions against plaintiff in favor of defendants in the amount of $3,905.50. (EX.I) The Plaintiff appealed to the Seventh Circuit, which affirmed the district court's decision. (EX. A, B) Plaintiff's petition for rehearing was denied. (EX. H) In addition the Seventh Circuit awarded costs to defendants AT&T in the amount of $695.50.(EX.A)

Other circuits and jurisdictions have granted relief to individuals as well as actions arising out of commercial debt setting, regarding claims of unfair trade practices under FDCPA. Dunn & Bradstreet, v. McEldowney, 564 F.Supp. 257 (1983) (EX.Q) Whatley v. Universal Collection Bureau, 525 F. Supp. 1204 (N.D. Ga. 1981); Jeter v. Credit Bureau, Inc. (1985 CA 11 GA.) 760 F.2d 1168. (EX. N) (Br.,p.21;Rehrg,p.7)

Despite Whatley, Riveria and Dunn & Bradstreet, another circuit was uncertain as to whether the FDCPA was meant to govern collection of purely business related debts, as applicable to this plaintiff. Bank of Boston International v. Arquello Tefel (1986, ED NY) 644 F. Supp. 1423, 3 UCCRS 2d 1069. (Br., p. 21;Rehrg, pp.7,15)

Plaintiff's FDCPA claims are based on Whatley, Riveria and Dunn & Bradstreet.

Because of the conflicting decisions between that of the Seventh Circuit and those of other circuits, Petitioner prays that this court follow the decisions of other circuits and interpret the Act accordingly in declaring Petitioner a consumer with rights of action under the Act. Irregardless of whether Petitioner is a consumer or not a consumer under the Act, the federal court still maintains jurisdiction over claims filed as a result of unfair trade practices based on the Act. Therefore, based on existing case law and recent interpretations of the federal statute (FDCPA), the Amended Complaint is not frivolous. The district court's dismissals and the Seventh Circuit's affirmance of dismissals and Rule 11 sanctions should be reversed.

Rule 11 Sanctions
Abuse of Discretion

At issue with respect to Petitioner's FDCPA claim is whether it was frivolous and whether the district court's (and the Seventh Circuit's) award was an abuse of discretion. The U. S. Supreme Court has already held that the courts of appeals should use uniformly the deferential review when assessing a district court's conclusion under the Equal Access to Justice Act, 28 U.S.C. 2412(d) and for case-specific decisions concerning the degree of factual or legal support for a litigating position to district courts, with review for clear error. Pierce v. Underwood, 108 S. Crt. 2541, 2546-49 (1988); Miller v. Fenton, 474 U. S. 104, 114 (1985). The Seventh Circuit adopted that standard for use consistently in 1988, whether the question be frivolousness on the objective side of Rule 11 or bad faith on the subjec6tive side.

Petitioner's Amended Complaint is well grounded in fact and is warranted by existing law. She has substantiated her good faith argument to support a claim under the FDCPA, and that Petitioner's claim is not interposed for any improper purpose such as to harass or to cAuse needless increase in the cost of litigation. The claim under the Act, as supported by cAse law, was filed after reasonable and inquiry in a pre-filing investigation and filed in the best of faith in compliance with the 1983 amendment to Rule 11. In that investigation,Petitioner met the jurisdictional requirement as to filing in the district court. Itri v.Equibank, supra. Other circuits have extended the definition of "consumer" to include individuals and commercial debts in which unfair trade practices are at issue. Dunn & Bradstreet v. McEldowney, supra;

Riveria, etc. v. MAB Collections, supra; Whatley v. Universal Collection Bureau, supra; Jeter v. Credit Bureau, supra.

In applying the Rule 11 Rule as opposed to the EAJA rule, the district court should not award sanctions unless it finds a violation, and the district court has found no violations in plaintiff's claims uner the FDCPA (only that plaintiff is not a consumer and the federal court lacks jurisdiction, both of which plaintiff argues as errors of law). Nor has the district court found unreasonble conduct, for which Rule 11 fees are based. Brown v. National Board of Medical Examiners, 800 F.2d 168, 173 (7th Cir. 1986)

Since plaintiff's claim is based on sound legal principles, discretionary choices by the court should also be based on or guided by sound legal principles rather than left to the court's inclination. Albemarle Paper Co. v. Moody, 422 U.S. 405

416 (1975), quoting from U. S.v. Burr, 25 F. Cas. 30, 35 (No. 14, 682d) (CC Va. 1807) (Marshall, C.J.)

Plaintiff conducted a reasonable amount of inquiry and legal research sufficient to file a claim in federal court under the FDCPA. It has been held, however that even if the legal point is obscure, or the argument absurd, it may not be sanctionable because a "reasonable" inquiry does not turn up every statute and precedent, as long as the pre-filing inquiry, research and investigation as to the central issues and legal questions of the case are supported by sound legal position. Plessy v. Ferguson, 163 U.S. 537 (1896); Szabo Food Service, Inc. v Canteen Corp., 823 F.2d 1073, 1080-82 (7th Cir. 1987). FDIC v. Elefant, 790 F.2d 661, 668 (7th Cir. 1986)

Plaintiff prays that this Court review the Rule 11 sanctions as to the FDCPA claim as a tort case under a deferential standard and find that the district courts findings both in law and in fact, are errors in law and such sanctions is an abuse of discretion. R. K. Harp Investment Corp. v. Mc Quade, 825 F.2d 1101, 103 (7th Cir. 1987); In re Central Ice Cream Co., 836 F.2d 1068, 1072 (7th Cir. 1987); Borowski v. DePuy, Inc., 850 F.2d 1429, 1434 (7th Cir. 1987); that plaintiff's pre-filing inquiry is reasonable under the language of tort law: Classic Components Supply, Inc v. Mitsubishi Electronics America, Inc., 841 F.2d 163, 165 (7th cir. 1988); Hays v. Sony Corp., 847 F.2d 412, 418 (7th Cir. 1988). In short, plaintiff prays that this Court reverse the Seventh Circuit and district court orders for Rule 11 sanctions in order

that Petitioner may have her day in court before a jury of her peers in the jurisdiction permitted under the Act. (Brief, pp. 6, 7, 30; Rep. Brief, pp. 13-17, 23; Rep. Brief EX. CC as to State Unfair Trade Practices Claims/Jury Trial in the U. S. District Court, Northern District, Eastern Division.)

B.

JURY TRIAL ENTITLED IN FDCPA CLAIMS UNDER TORT THEORY & SEVENTH AMENDMENT.

Review should be granted as to Petitioner's FDCPA claim which was dismissed by the district court trial judge without granint Petitioner a jury trial, in conflict with existing law and decisions of ALL other circuits, including the Seventh Circuit, which guarantees trial by jury under the Seventh Amendment of the U. S. Constitution and under the tort theory for claims under the Act.

Other cases inother circuits throughout the country have traditionally viewed debt collection abuses as torts, and under torts as a law claim jury trial has been protected. (Rep.Br. EX. CC) Whatley v. Universal Collection Bureau, 525 F. Supp. 1204 (N.D. Ga. 1981).

The following are other circuits viewing debt collection abuses as torts, and under torts as a law claim, that right

to jury has been preserved, including recovery under FDCPA to other not classified as consumers as in Whatley or Riveria. Santiesteban v. Goodyear Tire & Rubber Co., 306 F.2d 9 (5th Cir. 1962) (Applying Fla. law); Moore v. Greene, 431 F.2d 584 (9th Cir., 1970) (applying Calif. law); Hill Grocery Company v. Carroll, 223 Ala. 376, 136 So. 789 (1931); Ford Motor Co. v. Sheehan, 373 So.2d 956 (Fla. App.) cert. dismissed, 379 So. 2d 204 (Fla. 1979(; General Finance Corp. v. Davis, 126 Ga. App. 821, 191 S.Ed. 2d 865 (1972); Dawson v. Associates Finance Service Corp., 215 Kan. 814, 529 P.d 104 (1974); Boudreaux v. Allstate Finance Corp., 217 So. 2d 439 (La.App. 1968); Summitt Loans, Inc. v. Pecola, 265 Md. 43, 288 A.2d 114 (1972); Tolefson v. Price, 247 Or. 398, 430 P.2d 990 (1967); George v. Jordan Marsh Co., 359 Mass. 244. 268 N.E.2d 915 (1971); Duty v. General Finance Co., 154 Tex. 16, 273

S.W.2d 64 (1954); Warschauser v. Brooklyn Furniture Co., 159 App.Div. 81, 144 N.Y.S 257 (1913); Callarama v. Assoc. Discount Corp., 69 Mis.2d 287, 329 N.Y.S.2d 711 Sup. (1972); Crews v. Provident Finance Co., 271 N.C. 634, 157 S.E.2d 381 (1967); Moorehead v. J. C. Penney Co., 555 S.W.2d 713 (Tenn. 1977). (ReHrg Br., pp. 6-7)

In addition to treating a FDCPA claim as a traditional tort and perserving one's right to jury trial, under the Seventh Amendment, State law preserves rights to a jury trial in cases in which there is any disputed issue of fact as the ownership of the switchboards at issue in Exhibits D,E,F,J and M. Ill. Rev. Stat., Ch. 110, Sec. 2-619.

Other courts and circuits, including the Seventh Circuit, which has followed the above decisions in prior cases in which the word "court" referred to both judge

and jury and not only to a trial by a trial judge alone, Plaintiff refers this court to the following cases: Rogers v. Loether, 467 F.2d 1110, 1124 (7th Cir., 1972); aff'd sub nom. Curtis v. Loether, 415 U. S. 189, 94 S. Ct. 1005, 39 L.Ed. 2d 260 (1974); Lorillard v. Pons, 434 U. S. 575, 577, 98 S. Ct. 866, 868, 55 L.Ed2d 40 (1978); Sibley v. Fulton De Kalb Collection Service, 677 F.2d 830 (1982); §§ 802-817, 15 U.S.C. §§ 1692-92o.

Based on the above, Plaintiff prays that this Court reverse the District Court's trial judge decision without a jury as to the turnover order of May 3, 1989 (EX. J) and the Seventh Circuit Orders of September 12, 1990, December 1, 1989, Augut 28, 1989, November 8 and 9, 1988. (EX. B, D,E, F, H, J, K, and M) The Orders as they stand now are contrary to and in conflict with prior State, Federal and U.S. ppeals court decisions.

Statutory Cause of Action and the Seventh Amendment. In addition to other circuits treating claims as those under the FDCPA as traditional torts, the Act creates a statutory cause of action that entitles the victim of prohibited practices to obtain various types of relief in which the right to a jury trial is protected by the Seventh Amendment. Both U. S. Suypreme court cases and Fifth Circuit cases previously decided guarantee that right. Pernell v. Southall Realty, 416 U. S. 363, 375, 94 S. Ct. 1723, 1729, 40 L.Ed.2d 198 (1974); Federal Deposit Insurance Corp. v. New London Enterprises, 619 F.2d 1099, 1102-08 (5th Cir. 1980).

Plaintiff prays this court reverse District court orders and Seventh Circuit Orders dismissing Plaintiff's FDCPA claim in order that Plaintiff may receive a jury trial. (EX. B,D,F, H, J, K and M)

C.

FEDERAL COURT LACKED JURISDICTION TO DECIDE STATE PENDANT ISSUES DISMISSED OR DECLINED

Upon dismissing Plaintiff's pendant claims, the district court declined jurisdiction to hear matters regarding the subject matter of those pendant claims, as it rationalied in its Memorandum Opinions of August 4, 1989 and November 9, 1989.(NR-66, 81) United Mine Workers of America v. Gibbs, 383 U.S. 715 (1965). (EX. K & L)

Under Illinois law, when a federal court decides not to hear pendant state claims, it also lacks jurisdiction to hear or decide ALL issues relting to those state claims. Uptown Peoples Community Health Services Board of Directors v. Board of Commissioners of Cook county, et al, CA. Ill. 647 F.2d 727 cert. den. 102 Sup.Ct. 328. In re Green, 369 U.S. 689 (1962).

The State Court of last resort has already decided a federal question which

the Seventh Circuit has already followed in similar decisions. In addition, the U. S. Supreme Court has already decided that the court lacks discretion to consider the merits of a case over which it is without jurisdiction, and thus, by definition, a jurisdiction ruling may never be made prospective only." U.S. v. Robinson, 361 U.S. 220, 229, 80 S. Ct. 282, 288, L.Ed.2d 259 (1960); Farley Transportation Co. v. Santa Fe Trail Transportation Co., 778 F.2d 1365, 1368-1370 (CA9 1985) (the Court of Appeals was without jurisdiction to review the decision on the merits.)

In that turnover of the assets which are the subject matter of litigation in pendant claims declined by the district court go to the merits of the case, plain- prays that this court review this issue and find that the district court did not have jurisdiction over issues in pendant claims; therefore the turnover order should

be void in light of the district court's prior dismissals of state pendant claims, and order pertaining to Turnover Order be reversed. (EX. J,K.L,M) Petitioner seeks reversal of Seventh Circuit affirmance of the above order. (EX.D,E, F) The Turnover Order is an error in law.

Uniform Commercial Code. The Turnover Order is inconsistent and in conflict with existing State law under the Uniform Commercial Code, Sec. 2-725, 9-307. Petitioner, who was in possession of the switchboards from 1971-1987 purchased free of any perfected security interest under 9-307 at which time title passed from sellers, **BELL, individually as as agent for AT&T and AT&T-IS as agent for AT&T**, to buyer, Petitioner. (Rep.Br. pp.3-12) Respondents filed no action for replevy, default or breach of contract, acknowleding in an earlier case they had no ownership interest. There is no legal basis for any turnover.

D.

FEDERAL COURT TURNOVER ORDER INVALID IF ASSET SUBJECT MATTER OF LITIGATION.

Plaintiff's original litigtion contained four state, pendant claims in which Plaintiff alleged breach of contracts with regards to four on-premise switchboards. Those pendant claims in which the switchboards were subject matter and assets of plaintiff, were dismissed by the District Court without prejudice, in two separate orders dated August 3, 1988, and November 8 and 9, 1988. (EX. K & L) The District Court declined pendant jurisdiction of the state claims, as set forth in its Memorandum Opinions of August 4, 1988 and November 9, 1988. (NR-66, 81)

On May 3, 1989, on Defendants AT&T's Motion for Return of the Switchboards, the District Court granted the motion and orderted the Clerk of the District Court to return assets to defendants. (EX. J)

At the time of the Order, Plaintiff had a state claim pending in the Circuit Court of Cook county, Case No. 89 L 10721, filed August 3, 1988 with respect to those pendant claims the District Court declined.

Under Illinois law, any order directing the turnover of an asset which is the subject matter of the litigation is void. Brunswick v. Mandel, 59 Ill.2d 502, 505-507, 322 N.E.2d 25, 28-29 (1974). The Plaintiff, upon appeal to the Seventh Circuit, motioned that court for an Order staying the District Court's turnover order and/or returning the switchboards to Plaintiff since she had possession for approximately 20 years prior to impoundment. Plaintiff's motion was denied on August 28, 1989. (EX. E) Plaintiff filed a motion for rehearing, and for leave to file Affidavits with copies of checks and payments in full for switchboards. The Order was denied on December 1, 1989. (EX. D)

In addition to the above orders being contrary to and inconsistent with State (Illinois) law, the orders are both contrary to and inconsistent with existing Federal law in which it was decided similarly in another circuit. Kerckafric,Ltd. Maxwell Meyers Affiliations, Ltd., 108 F. Supp. 594, 595 (S. D. 1952). (Rep.Br.,p.13)

Based on the above arguments, Plaintiff prays that this Court reverse both the District Court Orders of May 3, 1989 and Seventh Circuit Orders of August 28, 1989 and December 1, 1989. (EX.D, E and J) (Reply Brief, pp. 3-8; 9-11; ReHearing Brief, pp. 8 and 11)

E.

DISMISSAL WITHOUT PREJUDICE IS NOT ADJUDICATION ON MERITS, FINAL OR RES JUDICATA.

At issue herein is whether the district court's dismissals of August 3, 1988 and November 8, 1988, were final decisions on the merits, despute the words "with prejudice" added to those federal claims.(EX.K.L) The Seventh Circuit has affirmed the district court's decisions that the above-dated orders were final decisions which were decided on the merits. (EX.C,G & H) Petitioner disagrees and requests review of those decisions since they are in conflict with the district court's further decisions entered in the same orders which grant Petitioner leave to file amended count, and further state in the Memorandum Opinions that the district court dismisses the state pendent claim for lack of subject matter jurisdiction -- two sound bases indicating the original or amended complaints were NOT decided on the merits.

A third reason to base the conclusion that the case was not decided on the merits is that the decisions on the records and docket sheet indicate that the trial judge and not a jury issued the orders, despite Petitioner's request for a jury trial and understanding and belief that she would receive a jury trial. As of this request for review, Petitioner has never had her day in court.

A review of the district court orders and the affirmances by the Seventh Circuit with respect to finality will effect this Petitioner's state claims filed in the Circuit Court of Cook County, Illinois under case 89 L 10721 and the issue of res judicata (discussed later in this Section)(EX.O) and whether Petitioner's Notice of Appeal of May 12, 1989 was timely as to those issues.

1. **Res Judicata.** The Seventh Circuit declined to review the issue of res judicata on September 12, 1990. (EX.B) Therefore, it neither affirmed or denied Petitioner's

request for review on the subject ruled on in the district court's Memorandum Opinions of August 4, 1988 and November 9, 1988. (NR-66,NR-81; Brief, pp. 14-16;Rep.Br.,p.1)

In applying Illinois law, based on the "nucleus of operative facts" as to second claims which plaintiff may file in state court or even in federal court, questions not litigated in the first case may be pursued in a second or a different claim. Petitioner has not only pursued those claims not actually litigated in the first claim under 86 C 1718, but those additional claims for which new causes of actions arose, and which the Seventh Circuit's existing law and decisions permit. Henry v. Farmer City State Bank, 808 F.2d 1228 (7th Cir. 1986) Hagge v. City of Evanston, 729 F.2d 510 (7th Cir. 1984); Durhan v. Neopolitan, 875 F.2d 91 (7th Cir. 1989); Mortell v. Mortell Co., 887 F.2d 1322 (7th Cir. 1989).

2. **Dismissals "Without Prejudice."**

The District Court's own rationale of declining to hear pendent claims and jurisdiction indicates that the case was not decided on the merits and the dismissal was not intended to be final. United Workers of America v. Gibbs, 383 U.S. 715 (1966) (NR-66, p.8; NR-81, p.11; Brief, pp. 15-17) Despite this rationale, the District Court placed the words "with prejudice" after dismissal of federal claims. (EX.K)

Illinois law rejects the notion that the mere placing of the words "with prejudice" acts as a final adjudication on the merits and looks to the actual proceedings rather than "talismanic" words. Petitioner's Brief states eight state cases supporting this argument, including a recent decision by the Seventh Circuit supporting that stand in Ill. Rev. Stat., ch. 110A

para. 273 (Illinois Supreme Court Rule 273). Torres v. Rebarchak, 814 F.2d 1219 (1987) (Brief, pp. 14-17)

The district court's ruling that "dismissals without prejudice" act as an final adjudication on the merits is an error in law, inconsistent with and in conflict with existing state law and statute and further in conflict with the Seventh Circuit's own agreement and application of the state laws. Therefore, Petitioner prays that this court review those errors and conflicts and issue an order in compliance with the State and Seventh Circuit's prior decisions and case law.

3. **Timely Filing of Notice of Appeal.** A third issue in this argument is whether Petitioner's Notice of Appeal, filed on May 12, 1989, is timely. The Seventh Circuit, basing its argument that Petitioner's claims were final and adjudicated on the merits as discussed above, ruled that

the Notice was not timely. (EX.C,E.G.H) Petitioner argues that based on her argument above, and supported by FRCP 54 and 58, the filing of Notice within 30 days of the district court's judgment of Rule 11 sanctions in the form of attorney's fees, was timely as to the issue of sanctions and all other issues and orders prior subject to discretionary review. Petitioner believes that the Seventh Circuit's authorities supports her argument as to filing the Notice of Appeal after final judgment. Budinich v. Becton Dickinson & Co., 108 S. Crt. 1717 (1988); Cleveland v. Berkson, 878 F.2d 1034 (7th Cir. 1989); FRCP. 58.

The Seventh Circuit's decision as to finality and the timeliness in filing Notice of Appeal in inconsistent with and in conflict existing Federal Rules of Civil Procedure, U. S. Supreme Court decision(s) and Seventh Circuit's own recent decisions, all of which Petitioner seeks review.

4. **Attorneys Fees under Section 1988 v. Rule 11 Sanctions.** The Respondents, **AT&T,** have argued that the attorney' fees are a result of adjudication on the merits, despite the district court specifically stating the the attorneys fees represented Rule 11 Sanctions awarded Respondents as a result of Petitioner filing a "frivolous complaint." (EX.B)

Different standards are used in determining attorneys fees based on judgments on the merits and Rule 11 Sanctions which are not only based on finality as in Budinich and Cleveland, but other cases decided by the U.S. Supreme Court in support of Petitioner's appeal. Brown Shoe Co. v. U. S., 370 U.S. 294, 82 S. Ct. 1502, 1514-1515, 8 L.Ed.2d 610 (1962); Dickinson v. Petroleum Conversion Corp., 338 U. S. 507,513-516, 70 S. Ct. 322-326, 94 L.Ed. 299 (1950); Firestone Tire & Rubber Co. v. Risjord, 449 U.S. 368, 379-380, 101 S. Crt. 669, 676, 66 L.Ed.2d 2d 571 (1981); U. S. v. Robinson, 361 U.S.

220, 229, 80 S. Ct. 282, 288, ___L.Ed. 2d 259 (1960); FRAP. 2, 3(a), 4(a)(1), 26(b) (Rep. Brief, pp. 18-22; Rehearing Brief, pp. 2-4)

Petitioner seeks review of the Order for Sanctions awarded to Respondents under 42 U.S.C., Sec. 1988 which is in based on attorney's fees after a decision on the merits, and prays this Court issue a determination not in conflict with, and consistent with, existing decisions and cases based on Rule 11 sanctions in accordance with standards already established by the U. S. Supreme Court. Those Orders in which Petitioner seeks review are Exhibits A,B, C, G, H, and I attached hereto. (Also, NR-66, 81 & 93)

F.

RULE TO SHOW CAUSE ISSUE UPON APPELLEE'S NON-COMPLIANCE WITH FEDERAL RULES OF APPELLATE PROCEDURE 12(b),12(c) AND 26.

An issue which the Seventh Circuit never decided was whether appellee, Illinois Bell Telephone Company was required to file its appearance within ten (10) days after Appellant's filing of Notice of appeal pursuant to Rule 12(b) and 12(c) of theFederal Rules of Appellate Procedure. Notice of Appeal was filed May 12,1989.

In addition, Rule 26 requires the party(ies) to request for an extension of time if brief cannot be filed timely, or any other reason in which party does not intend to or cannot comply with the Rules.

On April 27, 1990, the Seventh Circuit issued a Rule to Show Cause. However, as of the date of this Appeal to the U.S. Supreme Court, appellee has not filed any appearance or brief, nor has it requested any extensions. **(EX.P:#A-54942-1)**

No further orders or action was taken by the Seventh Circuit.

Rule 31(d) provides that failure to file timely brief may result in sanctions which include a Rule to show cause any waiver of opportunity for oral argument, or whatever other order the Court deems just. In re Harte, 701 F.2d 62 (7th Cir. 1983); In re Pritzker, 762 F. 533 (7th Cir. 1985); U. S. V. Bush, 797 F.2d 536, 537 (7th Cir. 1986); U. S. v. Ford, 806 F.2d 769 (7th Cir. 1986); U.S. v. Gerrity, 809 F.2d 1330-(7th Cir. 1986); U. S.v. Stillwell, 810 F.2d 135 (7th Cir. 1987); U. S. v. Santiago-Gonzalez, 816 F.2d 336 (7th Cir. 1988) **(#A-180227-1)**

Plaintiff prays that, should this Court find in favor of Plaintiff-Appellant in this Writ of Certiorari, an order issue prohibiting appellee Illinois Bell Telephone Company from filing a belated appearance or brief, participating in oral

arguments, and any other order or appropriate sanction for failure to comply with Federal Rules of Appellate Procedure 12(b), 12(c), 26 and 31(d), and that such order be consistent rather than in conflict with, previous and existing rulings on the same issue, by the Seventh Circuit.

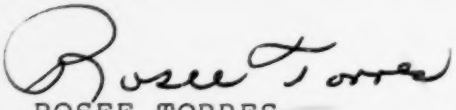
III. CONCLUSION

Petitioner requests review of all the lower court decisions, judgments and orders rendered by the U. S. District Court for the Northern District, Eastern Division and the U. S. Court of Appeals for the Seventh Circuit as set forth in the "Argument" in order that the ruling(s) be fair and just, not only to all parties involved, but to the public or public interest which may be effected by the federal court order divestiture and unfair trade practices. In order for the lower court orders to be fair and just they should be consistent with, and not in conflict with, those decisions already in existence in the Seventh Circuit, as well as other circuits, the U. S. Supreme Court, and both state and federal statutes, as in the case at issue in this Writ.

In addition to those orders argued in this Writ, Petitioner requests discretionary review as to all errors in law rendered by

the lower courts in which the rulings have so far departed from the accepted and usual course of judicial proceedings, pursuant to U. S. Supreme Court Rules 17.1(a) and and 34.1(a), respectively, particularly those rights guaranteed by the Seventh Amendment of the U. S. Constitution and the Fair Debt Collection Practices Act.

Respectfully submitted:



ROSEE TORRES,
Appellant-Petitioner

Date; March 22, 1991

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A P P E N D I X

E X H I B I T S

U. S. Court of Appeals - 7th Circuit

A Appeal Costs Awarded Appellees (AT&T) $695.05: 1/4/91 (#A-54942-1)

B. District Court Decision Plaintiff Not a Consumer under FDCPA, & Rule 11 Sanctions, AFFIRMED: $3,903.50. 9/12/90 (#A-193252-1)

C. District Court Dismissal of State Claims Without Prejudice and Federal Claims With Prejudice on 8/3/88 and 11/8/88, Final: AFFIRMED. Plaintiff's Notice of Appeal of 5/12/89 Untimely. 1/24/90 (#A-86514-1)

D. Plaintiff's Motion for Reconsideration of Stay Order (Turnover Order) on Return of Switchboards & Leave to File Supporting Affidavits, DENIED: 12/1/89 (#A-94094-1)

E Plaintiff's Motion for Stay Order (Turnover Order) for Return of Switchboards, denied: 8/28/89 (#A-57966)

F Plaintiff's Motion for Leave to File Affidavits w/Purchase Invoices & Payment Receipts (re Turnover Order), DENIED: 8/28/89 (#A-88792-1)

G District Court Dismissals of State Claims Without Prejudice & Federal Claims With Prejudice on 8/3/88 and 11/8/88 Final & Adjudicated on Merits. Notice of Appeal untimely. 5/18/89. (#A-54942-1)

H Plaintiff's Petition for Rehearing, DENIED. 1/4/91 (#A-54942-1)

U. S. District Court

I Defendants (AT&T) Motion for Sanctions, in amount of $3,903.50, GRANTED. 5/3/89 and 5/9/89 (NR 113-114)

J Defendants (AT&T) Motion for Return of Switchboards (Turnover Order), GRANTED. 5/3/89 (NR 113-115)

K District Court Dismissal with Prejudice 11/8/88 of FDCPA claim, 15 U.S.C., Sec.

1692 et. seq., AFFIRMED. Plaintiff Not a Consumer under Act, Claim is "frivolous." 11/8/89 & 11/9/88, (NR 81-83)

L District Court Dismissal of Counts II & III for Failure to State a Claim & Counts I-IV for lack of federal jurisdiction; res judicata as to Federal claims; Plaintiff granted leave to file Amended Complaint, Count III under FDCPA, 15 U.S.C., Sec. 1692 on Court's Motion. 8/3/88 (NR-66)

M Plaintiff's Motion for Rehearing (re Turnover Order), DENIED. 4/14/89

MISCELLANEOUS

N Decision on Riveria v. MAB Collections, Inc., 682 F. Supp. 174 (W.D.N.Y. 1988), "Recovery not limited to consumers under 15 U.S.C., Sec. 1692k, any natural person obligated to pay debt may bring claim under FDCPA." (#A-135481-1; #A-149495-1 & EX. 5 of #A-196847-1)

o State Court's Dismissal with Prejudice of State claims: res judicata. Torres v. AT&T et al, No. 89L10721, Circuit Court of Cook County, Ill. 8/8/90.

p Seventh Circuit's Rule to Show Cause re BELL under FRAP 12(b), 12(c) & 26. (April 27, 1990, #A-54942-1) Court did not act on this Motion.)

Q Decision on Dunn & Bradstreet v. Mc Downey, 564 F. Supp. 257 (1983). "...abusive, unfair or unethnical practices are not limited to just consumer debt collection agencies." (#A-135481-1; A-149495-1; A-158606-1)

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

Appeal from U.S.D.C., ND,ED., 88 C 2030

January 4, ,19 91

89 -2007

Before

Hon. MICHAEL S. KANNE, Circuit Judge

Hon. (NONE)

Hon. (NONE)

ROSEE TORRES, Jnd. and d/b/a LEGAL SEC. SERV. LTD, et al,

Plaintiff-Appellant

vs.

AMERICAN TELEPHONE & TELEGRAPH CO., et al

Defendant-Appellees

ORDER

This matter comes before the court for its consideration of the following documents:

EXHIBIT A

1. "BILL OF COSTS" filed herein on on September 26, 1990 by counsel for the appellees.

2. "APPELLANT'S OBJECTIONS TO APPELLEES BILL OF COSTS & SUPPLEMENTAL BILLING COSTS & PETITION FOR STAY OF MANDATE ON JUDGMENT" filed herein on October 2, 1990 by the pro se appellant.

On consideration thereof,

IT IS ORDERED that costs are AWARDED in the amount of $695.05.

# # #

(#A-54942-1)

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

Appeal from U.S.D.C., ND,ED., 88 C 2030

September 12, 19 90

89 - 2007

Before

Hon. JOEL M. FLAUM, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

Hon. MICHAEL S. KANNE, Circuit Judge

ROSEE TORRES, Ind. and d/b/a LEGAL SEC. SERV. LTD, et al,

Plaintiff-Appellant

vs.

AMERICAN TELEPHONE & TELEGRAPH CO., et al

Defendant-Appellees

ORDER

Plaintiff-Appellant, Rosee Torres, appeals from the district court's decision imposing sanctions against her pursuant to Rule 11 of the Federal Rules of Civil Procedure. We affirm.

EXHIBIT B

I.

Torres has a long history of litigation against AT&T and its various subsidiaries, arising out of several commercial lease transactions in whch Torres obtained telephone switchboards for use in her telephone answering service. On August 15, 1988, "Amended Court III", alleging a violation of the Fair Debt Collection Practices Act, 15 U.S.C., Sec. 1692 et seq. (the Act). The amended complaint followed the district court's dismissal of the federal claims in the original complaint in this case on the grounds of res judicata. In that order, the court also dismissed the plaintiff's state law claims, declining to exercise its pendent jurisdiction.

The defendants filed a motion to dismiss the amended complaint, alleging that it failed to state a claim because the Act is inapplicable to commercial

debts. The district court granted the motion to dismiss, finding that Torres was not a "consumer" within the meaning of that term under the Act. Thereafter, the defendants filed a motion for sanctions under Federal Rule of Civil Procedure 11. The district court granted the motion for sanctions and ordered the defendants to submit a fee petition. The court reviewed the petition determined that the fee requested was reasonable, and ordered Torres to pay the defendants the sum of $3,903.50.

II.

The only issue before this court on appeal is the sanctions issue. We review both the decision to award sanctions and the amount awarded under an abuse of discretion standard. Mars Steel Corp. v. Continental Bank N.A., 880 F.2d 928 (7th Cir. 1989) (en banc).

Rule 11 of the Federal Rules of Civil Procedure requires that a litigant conduct an adequate pre-filing investigation to determine whether the claim is well-grounded in fact or law at the time of filing. Brown v. Federation of State Medical Boards, 830 F.2d 1429, 1435 (7th Cir. 1987) In this instance, the plaintiff filed her amended complaint asserting a violation of the Fair Debt Collection Practices Act. The definition section of that statute provides that it is only applicable to consumer debts. In addition, in her brief in opposition to the motion to dismiss, plaintiff cited authority for the proposition that the Act applied to commercial transactions which was inapposite. The record reflects that there was ample justification for the district court's decision that the plaintiff did not conduct an aeequate pre-filing investigation in this instance. The imposition of sanctions

against Torres was, therefore, consistent with the objectives of Rule 11 and was not an abuse of discretion.

On appeal, Torres also seems to be attempting to challenge the amount of the sanctions awarded. It is not clear whether Torres raised her challenge to the amount of the award in he district court, hoever, if her district court pleadings are accorded the liberal construction which they must be accorded, then it appears that she attempted to challenge the amount of the award in the district court. Consequently, we will consider the claim on appeal. In this instance, Judge Grady entered two separate orders which discuss in detail the reasons for awarding the sanctions and the method used to compute the sanctions. The defendents submitted a fee petition which itemized the fees associated with the dismissal and the sanctions motion. The

district judge was familiar with the proceedings and with the prevailing costs and and fees for similar litigation in the area. He stated the reasons for awarding the sanctions and the manner of computing the award with sufficient specificity to satisfy the requirements of Rule 11; therefore, we do not find that he abused his discretion in setting the amount of the award in this case. Brown, 830 F.2d at 1438.

On appeal, the defendants also seek sanctions under Rule 38 of the Federal Rules of Appellate Procedure for plaintiff's pursuit of a frivolous appeal. In her brief on appeal, the plaintiff focused a substantial portion of her brief on the merits of the underlying case, despite our order indicating that only the sanctions issue was properly before us on appeal. Despite her inclusion of much irrelevant material in her brief, the plaintiff did

seek to challenge not only the decision to award sanction but also theamount of the award. We have previously held that the decisio of whether to impose sanctions under Rule 38 is a two-step process. Initially, we must determine whether the appeal is frivolous. Then we must determine whether sanction would be appropriate in that case. Williams v. United States Postal Service, 873 F.2d 1069, 1074-75 (7th Cir. 1989); Mays v. Chicago Sun-Times, 865 F.2d 134, 136 (7th Cir. 1989). In this instance, although the plaintiff's arguments are not artfully drawn and the possibility of success on appeal was limited, we do not conclude that the appeal was patently frivolous. As a result of that determination, we need not reach the second step of the process for determing whether to impose sanctions under Rule 38.

# # #

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

Appeal from U.S.D.C., ND,ED., 88 C 2030

January 24, , 19 90

89 - 2007

Before

Hon. WILLIAM J. BAUER, Chief Judge

Hon. DANIEL A. MANION, Circuit Judge

Hon. MICHAEL S. KANNE, Circuit Judge

ROSEE TORRES, Ind. and d/b/a LEGAL SEC. SERV. LTD, et al,

Plaintiff-Appellant

vs.

AMERICAN TELEPHONE & TELEGRAPH CO., et al

Defendant-Appellees

ORDER

This matter comes before the court for its considertion of the following documents:

EXHIBIT C

1. **"JURISDICTIONAL STATEMENT"** filed herein on May 18, 1989, by pro se appellant.

2. **'BRIEF MEMORANDUM"** filed herein on May 30, 1989, by pro se appellant.

3. **"APPELLEES" RESPONSE TO TORRES' BRIEF MEMORANDUM"** filed herein on June 19, 1989 by counsel for the appellees.

4. **"APPELLEES' RENEWED MOTION TO DISMISS"** filed herein on June 19, 1989, by counsel for the appellees.

5. **"APPELLANT'S RESPONSE TO APPELLEES' RENEWED MOTION TO DISMISS"** filed herein on September 29, 1989 by pro se Appellant.

On November 9, 1988 the district court entered final judgment with respect to plaintiff's cause of action. Thereaffter, the district court granted defendant's motion for Rule 11 sanctions on may 3, 1989. The plaintiff filed her notice of appeal on May 12, 1989, seeking appellate review of

the November 9, 1988 order as well as the order awarding sanctions on May 12, 1989. This notice of appeal is only timely as to the award of Rule 11 sanctions against plaintiff and does not bring up for review the order of November 9, 1988. Cleveland v. Berkson, 878 F.2d 1034, 1036 (7th Cir. 1989). See also Budinich v. Becton v. Dickinson Co., 108 S. Ct. 1717 (1988).

IT IS ORDERED that Appellees' Renewed Motion to Dismiss is GRANTED, and this appeal is hereby dismissed insofar as plaintiff seeks review of the orders entered August 3, 1988 and November 9, 1988.

IT IS FURTHER ORDERED that briefing in this appeal shall be taken out of abeyance and proceed as follows:

1. The brief and required short appendix of the appellant will be dueby February 23, 1990.

2. The brief of the appellees will be due by March 26, 1990.

3. The reply brief of the appellant, if any, will be due by April 9, 1990.

NOTE: The parties advised that Feceral Rule of Appellate Procedure 26(c), which allows for three additional days after service by mail, shall not apply when the due dates of briefs are specifically set by order of this court. All briefs will be due by the dates ordered.

# # #

(#A-86514-1)

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

Appeal from U.S.D.C., ND,ED., 88 C 2030

December 1, ,19 89

89 - 2007

Before

Hon. WILLIAM J. BAUER, Chief Judge

Hon. HARLINGTON WOOD,JR., Circuit Judge

Hon. DANIEL J. MANION, Circuit Judge

ROSEE TORRES, Ind. and d/b/a LEGAL SEC. SERV. LTD, et al,

Plaintiff-Appellant

vs.

AMERICAN TELEPHONE & TELEGRAPH CO., et al

Defendant-Appellees

ORDER

This matter comes before the court for its consideration upon the "MOTION FOR RE-HEARING ON APPELLANT'S MOTION TO STAY ORDER FOR RETURN OFSWITCHBOARDS & LEAVE TO FILE

EXHIBIT D

AFFIDAVITS" filed herein on October 4, 1989, by pro se plaintiff-appellant. On consideration thereof,

IT IS ORDERED that the above motion is DENIED.

(No Signatures)

(#A-94094-1)

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

Appeal from U.S.D.C., ND,ED., 88 C 2030

August 28, , 19 89

89 - 2007

Before

Hon. WILLIAM J. BAUER, Chief Judge

Hon. HARLINGTON WOOD, JR., Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

ROSEE TORRES, Ind. and d/b/a LEGAL SEC. SERV. LTD, et al,

Plaintiff-Appellant

vs.

AMERICAN TELEPHONE & TELEGRAPH CO., et al

Defendant-Appellees

ORDER

This matter comes before the court for its consideration of the following documents:

EXHIBIT E

1. **"MOTION TO STAY ORDER FOR RETURN OF SWITCHBOARDS"** filed herein on May 30, 1989 by the pro se appellant.

2. **"MOTION TO STAY JUDGMENT & ENFORCEMENT OR REVERSAL OF RULE 11 SANCTIONS"** filed herein on May 30, 1989, by pro se appellant.

3. **"MEMORANDUM IN SUPPORT OF MOTION TO STAY JUDGMENT"** filed herein on May 31, 1989 , by the pro se appellant.

4. **"APPELLEES" RESPONSE TO APPELLANT'S MOTION TO STAY ORDER FOR RETURN OF SWITCHBOARDS"** filed herein on June 8, 1989, by counsel for the appellees.

5. **"APPELLEES' RESPONSE TO APPELLANT'S MOTION TO STAY JUDGMENT & ENFORCEMENT OR REVERSAL OF RULE 11 SANCTIONS"** filed herein on June 8, 1989, by counsel for the appellees.

6. **"MOTION"** filed herein on June 13, 1989 by the pro se appellant.

7. **"APPELLANT'S ANSWER TO APPELLEES' SPONSE TO STAY ORDER FOR RETURN OF SWITCHBOARDS"** filed herein on August 28, 1989, by the pro se appellant.

8. **"APPELLANT'S ANSWER TO APPELEES' RESPONSE TO MOTION TO STAY JUDGEMENT & ENFORCEMENT OF RULE 11 SANCTIONS"** filed herein on August 28, 1989, by the pro se appellant.

On consideration thereof,

IT IS ORDERED that the Motion is GRANTED and the clerk of this court is directed to file APPELLANT'S ANSWER TO APPELLEES' RESPONSE TO STAY ORDER FOR RETURN OF SWITCHBOARDS and APPELLANT'S ANSWER TO APPELLEES' RESPONSE TO MOTION TO STAY JUDGMENT & ENFORCEMENT OF RULE 11 SANCTIONS instanster.

In regards to the appellant's MOTION TO STAY ORDER FOR RETURN OF SWITCHBOARDS," the appellant has failed to make

an adequate showing of likelihood of success on the merits under the requirements of Hilton v. Braunskill, 107 S. Ct. 2113 (1987). Accordingly,

IT IS ORDERED that the MOTION TO STAY ORDER FOR RETURN OF SWITCHBOARDS IS DENIED.

In regards to the appellant's "MOTION TO STAY JUDGMENT AND ENFORCEMENT OR REVERSAL OF RULE 11 SANCTIONS," this motion shall be HELD IN ABEYANCE pending the outcome of this appeal. If the appellees seek to collect upon the district court's award ofsanctions prior to the resolution of this appeal, the appellees shall file a status report with this court so informing it at least two weeks prior to such collection efforts.

# # #

(#A-57966-1)

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

Appeal from U.S.D.C., ND,ED., 88 C 2030

August 28, ,19 89

89 C 2007

Before

Hon. _____

Hon. _____

Hon. _____

ROSEE TORRES, Ind. and d/b/a LEGAL SEC. SERV. LTD, et al,

Plaintiff-Appellant

vs.

AMERICAN TELEPHONE & TELEGRAPH CO., et al

Defendant-Appellees

ORDER

Appellant's Motion for Leave to file Affidavit, DENIED.

(#A-88792-1)

EXHIBIT F

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

Appeal from U.S.D.C., ND,ED., 88 C 2030

May 18, , 19 89

89 2007

Before

Hon. (NONE ON RECORD)

Hon. (NONE ON RECORD)

Hon. (NONE ON RECORD)

ROSEE TORRES, Ind. and d/b/a LEGAL SEC. SERV. LTD, et al,

Plaintiff-Appellant

vs.

AMERICAN TELEPHONE & TELEGRAPH CO., et al

Defendant-Appellees

ORDER

A preliminary review of the short record indicates that the judgment Order dated November 8, 1988 (and entered on November 9, 1988 on the district court's

EXHIBIT G

civil docket) may not be appealable. The notice of appeal filed on May 12, 1989, is timely as to the award of Rule 11 sanctions in the amount of $3,903.50 against plaintiff. The notice of appeal is not timely and does not bring up for review the judgment order of November 8, 1988. See Budinich v. Becton Dickinson Co., 108 S.Ct. 1717 (1988) (Decision on merits is final decision for purpose of appeal whether or not there remains an unresolved request for attorneys fees). Accordingly,

IT IS ORDERED that plaintiff-appellant shall file, on or before May 31, 1989, a brief memorandum stating why this appeal should not be dismissed for lack of jurisdiction. A motion for voluntary dismissal pursuant to Fed. R. App. P. 42(b) will satisfy this requirement. Briefing shall be held in abeyance pending further court order. (#A-5494201) # #

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

Appeal from U.S.D.C., ND,ED., 88 C 2030

January 4, ,19 91

89 - 2007

Before

Hon. JOEL M. FLAUM, Circuit Judge

Hon. DANIEL A. MANION, Circuit Judge

Hon. MICHAEL S. KANNE, Circuit Judge

ROSEE TORRES, Ind. and d/b/a LEGAL SEC. SERV. LTD, et al,

Plaintiff-Appellant

vs.

AMERICAN TELEPHONE & TELEGRAPH CO., et al

Defendant-Appellees

ORDER

On consideration of the petition for suggestion for rehearing en banc filed in the above-entitled cause, no judge in active service requested a voteon the suggestion for rehearing en banc and all of

EXHIBIT H

the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS HEREBY ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

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*Circuit Judge John L. Coffey did not participate in the suggestion for rehearing en banc.

(#A-54942-1)

United States District Court

NORTHERN DISTRICT, EASTERN DIVISION

Hon. John D. Grady 88 C 2030

ROSEE TORRES, Ind. and d/b/a LEGAL SEC. SERV., LTD., etc.,

Plaintiff,

-vs-

AMERICAN TELEPHONE & TELEGRAPH CO.,INC. etc., et al,

Defendants

ORDER

Decision by Court: This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that sanctions in the amount of $3,903.50 awarded in favor of defendants AT&T.

Date: May 3, 1989 Docket: May 9,1989

H.Stuart Cunningham
Clerk

(Also, Order of March 15, 1989: NR-99)
(NR 113-114)

EXHIBIT I

United States District Court

NORTHERN DISTRICT, EASTERN DIVISION

Hon. John D. Grady 88 C 2030

ROSEE TORRES, Ind. and d/b/a LEGAL SEC. SERV., LTD., etc.,

Plaintiff,

-vs-

AMERICAN TELEPHONE & TELEGRAPH CO.,INC. etc., et al,

Defendants

ORDER

Minute Order of May 03, 1989:

Defendants' motion for return of four telephone answering switchboards is granted and the clerk is hereby directed to return the four switchboards to the AT&T defendants. The appeal bond is set at $5,000.

Date; May 3, 1989 ss/John J. Grady

(NR-113-115)

EXHIBIT J

United States District Court

NORTHERN DISTRICT, EASTERN DIVISION

Hon. John D. Grady 88 C 2030

ROSEE TORRES, Ind. and d/b/a LEGAL SEC. SERV., LTD., etc.,

Plaintiff,

-vs-

AMERICAN TELEPHONE & TELEGRAPH CO., INC. etc., et al,

Defendants

ORDER

This cause came to be heard on the motion of defendants to dismiss plaintiff's amended complaint Count III, and the court having granted said motion, it is hereby

ORDERED AND ADJUDGED that amended complaint Count III is dismissed with prejudice as to the federal claim and for lack of subject matter jurisdiction as to the state claim.

ss/John D. Grady (11/8/88)

(NR 81-83)

EXHIBIT K

United States District Court

NORTHERN DISTRICT, EASTERN DIVISION

Hon. John D. Grady 88 C 2030

ROSEE TORRES, Ind. and d/b/a LEGAL SEC. SERV., LTD., etc.,

Plaintiff,

-vs-

AMERICAN TELEPHONE & TELEGRAPH CO.,INC. etc., et al,

Defendants

ORDER

Counts II and III are dismissed for failure to state a claim. Counts I-IV are dismissed without prejudice for lack of federal jurisdiction. Defendants' motions for injunctions against plaintiff are denied. Plaintiff has leave to file a an amended Count III by August 15, 1988.

Date; Aug. 3, 1988

(Minute Order/Not Signed)

(NR-66)

EXHIBIT L

United States District Court

NORTHERN DISTRICT, EASTERN DIVISION

Hon. John D. Grady 88 C 2030

ROSEE TORRES, Ind. and d/b/a LEGAL SEC. SERV., LTD., etc.,

Plaintiff,

-vs-

AMERICAN TELEPHONE & TELEGRAPH CO., INC. etc., et al,

Defendants

ORDER

Plaintiff's Motion for Rehearing is DENIED.

Date: April 14, 1989

(NR-108)

EXHIBIT M

RIVERIA V. MAR COLLECTIONS, INC.

682 F. Supp. 174 (W.D.N.Y. 1988)

Honorable Judge Larimer, District Judge

DECISION AND ORDER

Defendant MAB Collections, Inc. d/b/a Mercantile Adjustment Bureau ("MAB"), was engaged by the Radiologists of the University of Rochester ("Radiologists") to collect a debt for medical services rendered to Victor Riveria, now deceased. Plaintiff Cirila C. Riveria, Victor Riveria's widow, was appointed administratrix of the estate on July 20, 1987. According to the records of Radiologists, services were rendered to decedent on October 16, 1985 and November 4, 1985 having a value of $168.00. After certain payments were made a balance of $80.20 remained. Services were also rendered on August 21, 1985., October 16 and 18, 1985; and November 3, 1985 in the amount of $198.00

EXHIBIT N

to which certain payments were applied, leaving a balance of $31.96. On or about June 12, 1986, plaintiff received the first of fifteen communications from MAB CONCERNING THE COLLECTION OF THESE DEBTS. All notices were in writing and addressed to "VICTOR EST RIVERA" (sic)"

Plaintiff's contention in this action is that MAB's communication constitute two violations of the Fair Debt Collection practices Act (FDCPA), 16 U.S.C., Sec. 1692 et seq. First, plaintiff alleges that letters sent by MAB did not contain a proper validation notice as required by 15 U.S.C., Sec. 1692g. Second plaintiff claims that defendant's letter of December 11, 1986 "threatened the possibility of legal action," a claimed violation of 15 U.S.C., Sec. 1692e(2)(A), (5), and (10). Plaintiff seeks statutory damages in the amount of $1,000 per violation, plus attorney's fees and costs. This matter is

before the court on the parties' cross motions for summary judgment.

One defense set forth by MAB is that plaintiff does not have standing to bring this action because all of the letters were mailed to the estate prior to her appointment as administrix. MAB claims its communications were intended solely for the estate prior to her appointment as administratrix, properly appointed at the time the alleged violations occurred, may bring suit. Accordingly, before discussing the merits of this case, the court must address the issue of standing.

[1,2] Civil liability arises under FDCPA whenever "any debt collector who fail to comply with any provision of this subchapter with respect to any person is liable to such person..." 15 U.S.C., Sec. 1692k (emphasis added). The liability section is couched in the broadest possible language. Recovery is not limited

to "consumers" as defined at 15 U.S.C., Sec. 1692a(3) as "any natural person obligated to pay any debt." Any person who comes in contact with proscribed debt collection practices may bring a claim. (Emphasis added) Whatley v. Universal Collection Bureau, Inc., 525 F. Supp. 1204, 1206 (N.D. Ga. 1981)

# # #

(A#135481-1
149495-1
196847-1

IN THE CIRCUIT COURT OF COOK COUNTY, ILL

COUNTY DEPARTMENT, LAW DIVISION

TORRES, et al, Plaintiffs, -vs- AT&T, et al, Defendants	NO. 89L10721

ORDER

This cause coming to be heard on the motion of defendants, American Telephone & Telegraph Company, AT&T Information Systems, Inc., Pamela R. Hanebutt, and Illinois Bell Telephone Company to strike plaintiff's Amended Complaint and dismiss the action with prejudice, the Court having considered the memoranda filed by the parties and the oral argument of counsel and plaintiff, and being fully advised in the premises, it is hereby ordered as follows:

For the reasons stated in open court this date, defendants' motion to strike

EXHIBIT "O"

the amended complaint and dismiss this action with prejudice is **GRANTED. Plaintiff's Amended Complaint is stricken is its entirety, and this action is dismissed with prejudice.**[1/]

ENTER:

ss/Thomas P. Quinn
Circuit Court # 238

Date: August 8, 1990

Barbara Rakley/Sidley & Austin
Attorney for AT&T, AT&T-IS, P. Hanebutt
One First National Plaza
Chicago, Ill 60603
(312) 853-7000

*1/ State court case pending in the Appellate Court of Illinois, First District, First Division, Case No. 90-2395.

United States Court of Appeals

FOR THE SEVENTH CIRCUIT

Appeal from U.S.D.C., ND,ED., 88 C 2030

April 27, ,19 90

89 C 2007

Before

Hon. (NONE)

Hon. (NONE)

Hon. (NONE)

ROSEE TORRES, Ind. and d/b/a LEGAL SEC. SERV. LTD, et al,

Plaintiff-Appellant

vs.

AMERICAN TELEPHONE & TELEGRAPH CO., et al

Defendant-Appellees

RULE TO SHOW CAUSE (APPELLEE)

The clerk has brought to the attention of this Court that fact that you have failed to file appellee's brief within the required time. No motion for an extension of time within which to file appellee's

EXHIBIT P

brief has been made pursuant to Circuit Rule 26. On consideration whereof,

IT IS ORDERED that you, as counsel for the appellee, respond within fourteen (14) days of the date of this order as to why this appeal should not be submitted to the Court for decision without the filing of a brief by the appellee and without oral argument, pursuant to Circuit Rule 31(d).*

# # #

(#A-54942-1)

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*Rule to Show Cause directed to attorney for appellee, Illinois Bell Telephone Company, Edward Butts, Room 27A, 225 W. Randolph Street, Chicago, IL 60606.

DUNN & BRADSTREET V. MC ELDOWNEY
564 F. Supp. 257 (1983)

(1) 15 U.S.C., Sec. 1692(2)(Supp.IV 1980)

"The court is of the opinion that the rationale contained in FDCPA enacted by Congress applies in a commercial debt collection setting as well. Although Congress did limit the FDCPA to consumer debts collection, certainly abusive, unfair, or unethnical practices are not limited just to consumer collection agencies. Regulation of consumer debt collection practices is a sufficiently compelling state interest to meet the Pike balancing test..."

(Emphasis Added)

Brief (#A-135481-1) pp. 18-23
Reply Brief: (#A-149495-1) pp. 5-8, 13-16
EX. "DD", pp. 1-37
EX. DD-1: pp. 78-82
(#A-158606-1, Add.'l Authority, 5/7/90)

EXHIBIT "Q"